

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

VISA U.S.A., INC., VISA INTERNATIONAL
CORP., AND MASTERCARD INTERNATIONAL
INCORPORATED,

Defendants.
-----X

Civil Action No. 98-7076 (BJ)

HIGHLY CONFIDENTIAL

**DEFENDANT MASTERCARD INTERNATIONAL
INCORPORATED'S RESPONSES AND OBJECTIONS
TO PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND RELATED DOCUMENT REQUESTS**

Defendant MasterCard International Incorporated ("MasterCard"), by its attorneys and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Civil Rules 26.2, 26.3, 33.1, 33.3, and 33.4, hereby responds and objects to plaintiff's Second Set of Interrogatories ("Interrogatories") and Related Document Requests (the "Requests") as follows:

GENERAL OBJECTIONS

1. MasterCard objects to the Interrogatories and Requests on the grounds that many of the responses sought by plaintiff have been supplied previously in documents and/or by witnesses produced by MasterCard or others during (i) plaintiff's five-year investigation of the matters set forth in this action (the "Pre-Complaint Investigation"), and (ii) this subsequent litigation (the "Litigation"). During the course of the Pre-Complaint Investigation and the Litigation, plaintiff collected millions of pages of documents and examined numerous witnesses produced by MasterCard, Visa, and various third parties pursuant to Civil Investigative Demands, subpoenas and discovery requests. As a result, plaintiff's

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Interrogatories and Requests, to the extent they seek responses or documents already provided by MasterCard, are unduly burdensome, oppressive, vexatious and impose unwarranted and unnecessary burden and expense on MasterCard.

2. MasterCard objects to the Interrogatories and Requests to the extent that they are vague, ambiguous, cumulative, duplicative, overbroad, unduly burdensome, based upon incorrect factual assumptions or otherwise unclear as to the precise information sought, and to the extent that they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

3. MasterCard objects to the Interrogatories and Requests to the extent that they seek to impose duties or obligations on MasterCard beyond those imposed by the Federal Rules of Civil Procedure or by this Court's Local Civil Rules. In particular, MasterCard objects to the Interrogatories as unwarranted and prohibited by Local Rule 33.3 (b) inasmuch as plaintiff could have obtained the information more practically through document requests and depositions.

4. MasterCard objects to the Interrogatories and Requests to the extent that they call for documents containing information that existed on or prior to August 1, 1994, the agreed-upon discovery deadline for MasterCard document production, on the grounds that such information would be cumulative, would impose an undue burden and expense on MasterCard, and would not lead to the discovery of information that is either relevant to the subject matter of this litigation or is reasonably calculated to lead to the discovery of admissible evidence. Several particular Interrogatories and Requests call for information from documents dating back to 1990 or earlier. MasterCard has already responded to interrogatories, identified and produced witnesses, and produced several million pages of documents in response to two Civil Investigative Demands issued by plaintiff during the five-year Pre-Complaint Investigation and the discovery requests made in the Litigation. As a result, plaintiff already possesses relevant information that predates August 1, 1994.

5. MasterCard objects to the Interrogatories to the extent that they impose an ongoing duty to update the responses beyond that which is required by the Federal Rules of Civil Procedure. Rule 26(e)(2) of the Federal Rules only imposes an obligation on MasterCard to update its interrogatory responses if it learns that a response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties. Accordingly, MasterCard will not supply additional responsive information ascertained subsequent to this response if it is merely cumulative or is otherwise not required by Rule 26(e)(2).

6. MasterCard objects to the Interrogatories and Requests to the extent that they seek information covering transactions, activities, and events outside of the United States. Plaintiff has alleged (in Paragraph 18 of the Complaint) that the United States is the relevant geographic market. Therefore, any Interrogatories and/or Requests seeking information about events or circumstances outside of the United States are overbroad and are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. MasterCard objects to the Interrogatories and Requests to the extent that they call for information that is protected from discovery by the attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, or any other privilege, protection or immunity applicable under the governing law ("privileged information").

8. MasterCard objects to the Interrogatories and Requests to the extent that they seek information in the possession or custody of entities, parties or persons other than MasterCard.

9. MasterCard objects to the Interrogatories and Requests to the extent that they seek information not maintained in the usual course of business.

10. MasterCard objects to the Interrogatories and Requests to the extent that they are designed to annoy, oppress, embarrass, or impose undue burden or expense upon MasterCard.

11. MasterCard objects to the Instructions and Definitions set forth in the Interrogatories and Requests to the extent that they: 1) are neither authorized by, nor comply with, the Federal Rules of Civil Procedure or this Court's Local Civil Rules; 2) call for information that is neither relevant to any issues that are or may be involved in this action, nor reasonably calculated to lead to the discovery of admissible evidence; 3) are overbroad, vague, ambiguous, indefinite and unduly burdensome; or 4) seek to impose duties or obligations on MasterCard beyond those imposed by the Federal Rules of Civil Procedure or this Court's Local Civil Rules

12. Instruction No. 1. MasterCard objects to plaintiff's Instruction No. 1 to the extent that it seeks to impose an undue burden upon MasterCard above and beyond its obligations under the Federal Rules of Civil Procedure. Rule 26(e)(2) imposes an obligation on MasterCard to update its interrogatory responses only if it learns that a response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties. Therefore, MasterCard will not supply additional responsive information ascertained subsequent to this response if it is merely cumulative or is otherwise not required by Rule 26(e)(2). Furthermore, MasterCard will limit its Interrogatory responses to information that is within the possession, control or custody of MasterCard and is maintained in the ordinary course of business.

13. Instruction No. 2. MasterCard objects to Instruction No. 2 on the grounds that the definition of "person" contained therein is broader than permitted by Local Civil Rule 26.3(c)(6) and, therefore, is overbroad and unduly burdensome.

14. MasterCard objects in general to the Appendix Definitions to the extent that they are vague, ambiguous, and can be interpreted in multiple and inconsistent ways. Furthermore, any absence of a specific objection to any definition should not be interpreted as an acceptance of that definition by MasterCard.

15. Definition No. 1. MasterCard objects to the definition of "Identify" set forth in Appendix Definition No. 1 to the extent that it imposes obligations upon MasterCard which are inconsistent with this Court's Local Rules.

16. Definition No. 3. MasterCard objects to the definition of "you," "your," or "your company" set forth in Appendix Definition No. 3 on the grounds that it is overbroad and unduly burdensome, and calls for information in the possession or custody of entities, parties or persons other than MasterCard.

17. Definition No. 4. MasterCard objects to Appendix Definition No. 4 on the grounds that it is vague and ambiguous.

18. MasterCard's objections and responses to the Interrogatories and Requests are based upon information currently known or available to MasterCard through reasonable and diligent inquiry. MasterCard reserves the right to amend or supplement its objections and responses to the Interrogatories and Requests should additional information become known and/or available to it.

19. MasterCard's decision to provide information pursuant to the Interrogatories and Requests, notwithstanding the objectionable nature of any of the Interrogatories, Requests, Definitions or Instructions, should not be construed as: (a) a stipulation that the material is relevant, (b) a waiver of the general or specific objections asserted hereto, or (c) an agreement that subsequent interrogatories or requests for similar information will be treated in a similar manner. MasterCard specifically reserves all objections as to the competency, relevancy, materiality and admissibility of the information provided, all objections as to burden, vagueness, unintelligibility, overbreadth and ambiguity, and all rights to object to the use of any documents or information in any subsequent proceeding, including, without limitation, the trial of this, or any other, action.

20. MasterCard's specific objections to the Interrogatories and Requests are set forth herein. MasterCard is willing to meet and confer with plaintiff to discuss clarification or an appropriate narrowing of objectionable Interrogatories and Requests.

RESPONSES AND SPECIFIC OBJECTIONS**Interrogatory No. 1**

Identify all briefs, draft briefs, memoranda or other documents prepared by Visa U.S.A. and/or its counsel for submission (in final form) to the Court and/or opposing counsel in the *MountainWest* litigation (i.e., the trial court and appellate proceedings leading to the decision of the Court of Appeals in *SCFC ILC, Inc. v. Visa USA*, 36 F.3d 958 (10th Cir. 1994) that were received by you prior to 1995, including, for each such document: (i) the Bates number (including prefix or custodial information) given the document in this (or the *Wal-Mart*) litigation; (ii) the date it was received by you; (iii) who received it; and (iv) who read it. (To the extent you assert such documents are privileged, you should not only provide the information requested but also prepare a privilege log containing the author/source of the document, the recipient of the document, a subject-matter description of the document sufficient to allow the Government to determine the nature of the document, the claim of privilege being asserted, and the date of the document.)

Response to Interrogatory No. 1

MasterCard objects to Interrogatory No.1 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection. MasterCard further objects to Interrogatory No. 1 pursuant to Local Rule 33.3 (b) inasmuch as the information requested can more practically be obtained through other means of discovery.

Subject to and without waiving the foregoing general and specific objections, MasterCard will respond to this interrogatory by producing (at a mutually agreed-upon time and place) briefs, memoranda or other final documents submitted to the Court in connection with the *MountainWest* litigation that was provided to MasterCard by Visa counsel prior to 1995.

Interrogatory No. 2

Did MasterCard have a joint defense agreement with Visa U.S.A. with respect to any claims or causes of action alleged against either or both of them by Discover/Dean Witter/Mountain West prior to 1995? If so, please state the dates the agreement was in effect and the claims or causes of action to which the agreement was applicable.

Response to Interrogatory No. 2

MasterCard objects to Interrogatory No. 2 on the grounds that it is vague, ambiguous, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection. MasterCard further objects to Interrogatory No. 2 pursuant to Local Rule 33.3 inasmuch as the information requested can more practically be obtained through other means of discovery.

MasterCard at this point has not been able to identify any "joint defense agreement," even if one exists, however, MasterCard would consider the existence and contents of such an agreement to be privileged and therefore protected from disclosure.

Interrogatory No. 3

Identify each agreement between MasterCard and a member bank entered into between January 1, 1990 and the date of your answer to this interrogatory whereby that member bank agrees that, by a specific future date, a certain percentage of its entire portfolio of cards will be MasterCard cards (e.g., the 1999 agreements with Citibank and Chase Manhattan).

Response to Interrogatory No. 3

MasterCard objects to Interrogatory No. 3 on the grounds that it is vague, ambiguous, overbroad, cumulative and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 3 pursuant to Local

Rule 33.3(b) inasmuch as the information requested can more practically be obtained through other means of discovery.

Subject to and without waiving the foregoing general and specific objections, MasterCard will respond to Interrogatory No. 3 by producing copies of the executed agreements requested herein at a mutually agreed-upon time and place.

Interrogatory No. 4

Identify each merchant that you have reason to believe discontinued accepting MasterCard cards at any time since January 1995, due, in whole or in part, to an increase in the merchant discount.

Response to Interrogatory No. 4

MasterCard objects to Interrogatory No. 4 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. MasterCard further objects to Interrogatory No. 4 pursuant to Local Rule 33.3(b) inasmuch as the information requested can more practically be obtained through other means of discovery.

Subject to and without waiving the foregoing general and specific objections, MasterCard states that as it neither establishes the merchant discount nor contracts with merchants for the acceptance of MasterCard or for renewal of contracts pertaining to the acceptance of MasterCard, it does not possess sufficient information to respond to Interrogatory No. 4.

DOCUMENT REQUESTS

Document Request No. 1

To the extent not previously produced to plaintiff, the documents received by you that are the subject of Interrogatory 1 above.

Response to Document Request No. 1

MasterCard objects to Request No.1 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

Subject to and without waiving the foregoing general and specific objections, MasterCard will respond to this request by producing (at a mutually agreed-upon time and place) briefs, memoranda or other final documents submitted to the Court in connection with the *MountainWest* litigation that was provided to MasterCard by Visa counsel prior to 1995.

Document Request No 2

The joint defense agreement(s) that are the subject of Interrogatory 2 above.

Response to Document Request No. 2

MasterCard objects to Request No. 2 on the grounds that it is vague, ambiguous, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

See Response to Interrogatory No. 2 above.

Document Request No 3

The agreements requested to be identified in Interrogatory 3 above.

Response to Document Request No. 3

MasterCard objects to Request No. 3 on the grounds that it is vague, ambiguous, duplicative, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, MasterCard will respond to Request No. 3 by producing copies of the executed agreements requested herein at a mutually agreed-upon time and place.

Document Request No 4

All documents concerning any meeting after January 31, 1999 of the Corporate Strategy Subcommittee of the MasterCard International Board of Directors, including pre-read materials, presentations, minutes, and handwritten notes.

Response to Document Request No. 4

MasterCard objects to Request No.4 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

Subject to and without waiving the foregoing general and specific objections, MasterCard will produce responsive, non-privileged documents at a mutually agreed-upon time and place.

Document Request No 5

All documents received from or sent to Mercer and Associates after January 1, 1999 concerning any studies, surveys, analyses or other work related to any consideration of a change in the corporate structure or governance of MasterCard. This request includes, but is not limited to, any documents describing the terms of retention of Mercer and Associates concerning such activities.

Response to Document Request No. 5

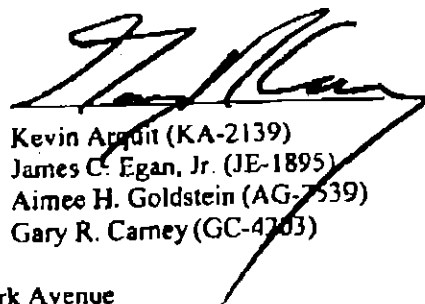
MasterCard objects to Request No.5 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it requires the disclosure of information protected by the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection.

Subject to and without waiving the foregoing general and specific objections, MasterCard will produce responsive, non-privileged documents at a mutually agreed-upon time and place.

Dated. New York, New York
January 3, 2000

CLIFFORD CHANCE
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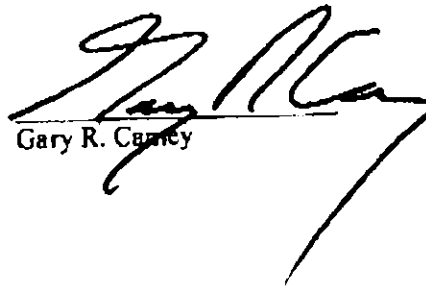
CERTIFICATE OF SERVICE

I, Gary R. Carney, hereby certify that a true and correct copy of the foregoing responses and objections of defendant MasterCard International Inc. to Plaintiff's Second Set of Interrogatories and Document Requests was served this 3rd day of January 2000 via United States mail, postage prepaid on the following counsel for the parties in the action:

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